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13

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 MARCELO MUTO, NOAH BREEZE,
17 and all others similarly situated,

18 Plaintiffs,

19 v.

20 FENIX INTERNATIONAL LIMITED;
21 FENIX INTERNET LLC,

22 Defendants.

23 Case No.: 5:22-cv-02164-SSS-KK
24 **SECOND AMENDED CLASS**
25 **ACTION COMPLAINT**

26 Judge: Hon. Sunshine Suzanne
27 Sykes

28

JURISDICTION

1. This Court's jurisdiction over this matter was correctly set forth in the notice of removal filed by Defendants on December 5, 2022. As explained therein, jurisdiction lies under 28 U.S.C. §§ 1332(d), 1441, and 1446.

INTRODUCTION

2. Pursuant to Federal Rule of Civil Procedure 15(a)(2) and California Civil Code § 1782(d), Plaintiffs Marcelo Muto and Noah Breeze hereby amend the class action complaint that was removed to this Court on December 5, 2022.

3. California’s Automatic Renewal Law (the “ARL”) requires that when a business enrolls a California consumer in a service that automatically renews at the end of an initial enrollment period, the business must disclose the terms of that automatic renewal “in a clear and conspicuous manner” before the initial subscription is consummated, and thereafter send the user an acknowledgment further describing the auto-renewal terms and providing information as to how the user can readily cancel before incurring an auto-renewal charge.

4. Defendants own and operate the popular sexual content platform “OnlyFans,” through which consumers can “subscribe” to the OnlyFans accounts of one or more among thousands of different performers, known as “content creators.” Consumer subscriptions are the cornerstone of Defendants’ revenue model. Yet in violation of California’s ARL, by failing to clearly and conspicuously advise its customers that their initial subscription to a creator will be automatically renewed, OnlyFans tricks its customers into making recurring payments, triggering a charge to the customer’s debit or credit card ranging from \$4.99 to \$49.99 for the following month.

5. Plaintiffs Marcelo Muto and Noah Breeze bring this action to obtain injunctive and monetary relief for themselves and all other similarly situated OnlyFans customers in California, who entered an automatic renewal plan without receiving the pre- and post-subscription disclosures that are required by California law.

PARTIES

2 6. Plaintiff Marcelo Muto is a resident of Riverside County, California.
3 7. Plaintiff Noah Breeze is a resident of Los Angeles County, California.
4 8. Defendant Fenix International Limited (“FIL”) is, on information and belief,
5 a business entity incorporated under the laws of the United Kingdom, with its principal
6 place of business in London. FIL is the counterparty to the Terms of Service that
7 customers of OnlyFans.com enter when they become members of the site, and thus does
8 business throughout the United States, including with hundreds or thousands of residents
9 of Riverside County. On information and belief, FIL is the business entity that receives
10 some or all of the automatic renewal fees that are paid by OnlyFans customers and that are
11 the subject of this complaint.

12 9. Defendant Fenix Internet LLC is a Delaware limited liability company that
13 is headquartered in Florida. On information and belief, Fenix Internet LLC is a wholly
14 owned subsidiary of FIL, and is the company through which OnlyFan's content creators
15 receive payment. Accordingly, Fenix Internet LLC is, or has been, continuously in
16 possession of money wrongfully taken from Plaintiff and the class he seeks to represent,
17 and which is to be restored to those consumers by virtue of this lawsuit.

VENUE

19 10. Venue is proper in this jurisdiction because Plaintiffs reside in Riverside and
20 Los Angeles counties, and entered into the transactions at issue in this case in this District.

APPLICABLE LAW

22 11. In 2009, the California Legislature passed Senate Bill 340, which took effect
23 on December 1, 2010 as Business & Professions Code section 17600 *et seq.*, commonly
24 known as the Automatic Renewal Law or “ARL.” The ARL was passed because:

It has become increasingly common for consumers to complain about unwanted charges on their credit cards for products or services that the consumer did not explicitly request or know they were agreeing to. Consumers report they believed they were making a one-time purchase of a product, only to receive continued shipments of the product and charges on their credit card. These unforeseen charges are

1 often the result of agreements enumerated in the “fine print”
2 on an order or advertisement that the consumer responded to.

3 12. The Assembly Committee on the Judiciary provided the following
background for the legislation:

4 This non-controversial bill, which received a unanimous vote
5 on the Senate floor, seeks to protect consumers from
6 unwittingly consenting to “automatic renewals” of
7 subscription orders or other “continuous service” offers.
8 According to the author and supporters, consumers are often
charged for renewal purchases without their consent or
knowledge. For example, consumers sometimes find that a
magazine subscription renewal appears on a credit card
statement even though they never agreed to a renewal.

9 13. The ARL seeks to ensure that, before there can be a legally-binding
10 automatic renewal or continuous service arrangement, there must first be clear and
11 conspicuous disclosure of certain terms and conditions and affirmative consent by the
12 consumer. To that end, § 17602(a) makes it unlawful for any business making an
13 automatic renewal offer or a continuous service offer to a consumer in California to do
14 any of the following:

15 a. Fail to present the automatic renewal offer terms in a clear and
16 conspicuous manner before the subscription or purchasing agreement is fulfilled and in
17 visual proximity to the request for consent to the offer. For this purpose, “clear and
18 conspicuous” means “in larger type than the surrounding text, or in contrasting type, font,
19 or color to the surrounding text of the same size, or set off from the surrounding text of
20 the same size by symbols or other marks, in a manner that clearly calls attention to the
21 language.” The statute defines “automatic renewal offer terms” to mean the “clear and
22 conspicuous” disclosure of the following: (1) that the subscription or purchasing
23 agreement will continue until the consumer cancels; (2) the description of the cancellation
24 policy that applies to the offer; (3) the recurring charges that will be charged to the
25 consumer’s credit or debit card as part of the automatic renewal plan or arrangement, (4)
26 the length of the automatic renewal term or that the service is continuous; and (5) the
27 minimum purchase obligation, if any.

28 b. Charge the consumer’s credit or debit card for an automatic renewal or

1 continuous service without first obtaining the consumer’s affirmative consent to the
2 agreement containing the automatic renewal offer terms, including the terms of an
3 automatic renewal offer or continuous service offer that is made at a promotional or
4 discounted price for a limited period of time.

5 c. Fail to provide an acknowledgment that includes the automatic renewal
6 terms, cancellation policy, and information regarding how to cancel in a manner that is
7 capable of being retained by the consumer. Section 17602(b) requires that the
8 acknowledgment specified in § 17602(a)(3) include a toll-free telephone number,
9 electronic mail address, or another “cost-effective, timely, and easy-to-use” mechanism
10 for cancellation.

11 14. If a business sends any goods, wares, merchandise, or products to a
12 consumer under a purported automatic renewal or continuous service arrangement without
13 first obtaining the consumer’s affirmative consent to an agreement containing the “clear
14 and conspicuous” disclosures as specified in the ARL, the goods, wares, merchandise,
15 and/or products are deemed to be an unconditional gift to the consumer, who may use or
16 dispose of them without any obligation whatsoever. While the ARL does not include a
17 private right of action, a violation nevertheless gives rise to restitution and injunctive
18 relief under the False Advertising Law and Unfair Competition Law.

19 **FACTUAL ALLEGATIONS**

20 15. Every subscription to a creator’s content on OnlyFans violates the ARL in
21 numerous ways, but primarily by:

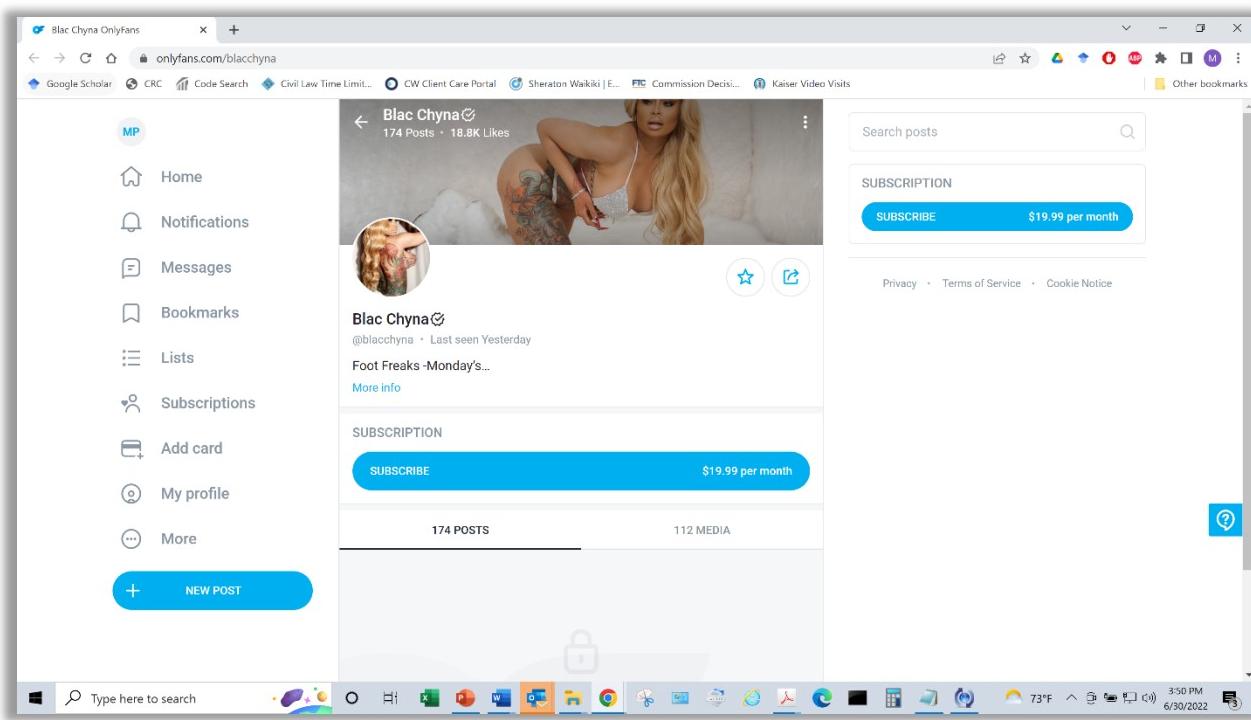
- 22 (1) failing to “present the automatic renewal offer terms . . . in a clear and
23 conspicuous manner” before payment is made, in violation of section
24 17602(a)(1);
25 (2) charging the consumer’s credit or debit card “without first obtaining the
26 consumer’s affirmative consent to the agreement containing the automatic
27 renewal offer terms” in violation of section 17602(a)(2); and
28 (3) failing to “provide an acknowledgment that includes the automatic

1 renewal offer terms . . . cancellation policy, and information regarding how
2 to cancel” in violation of section 17602(a)(3).

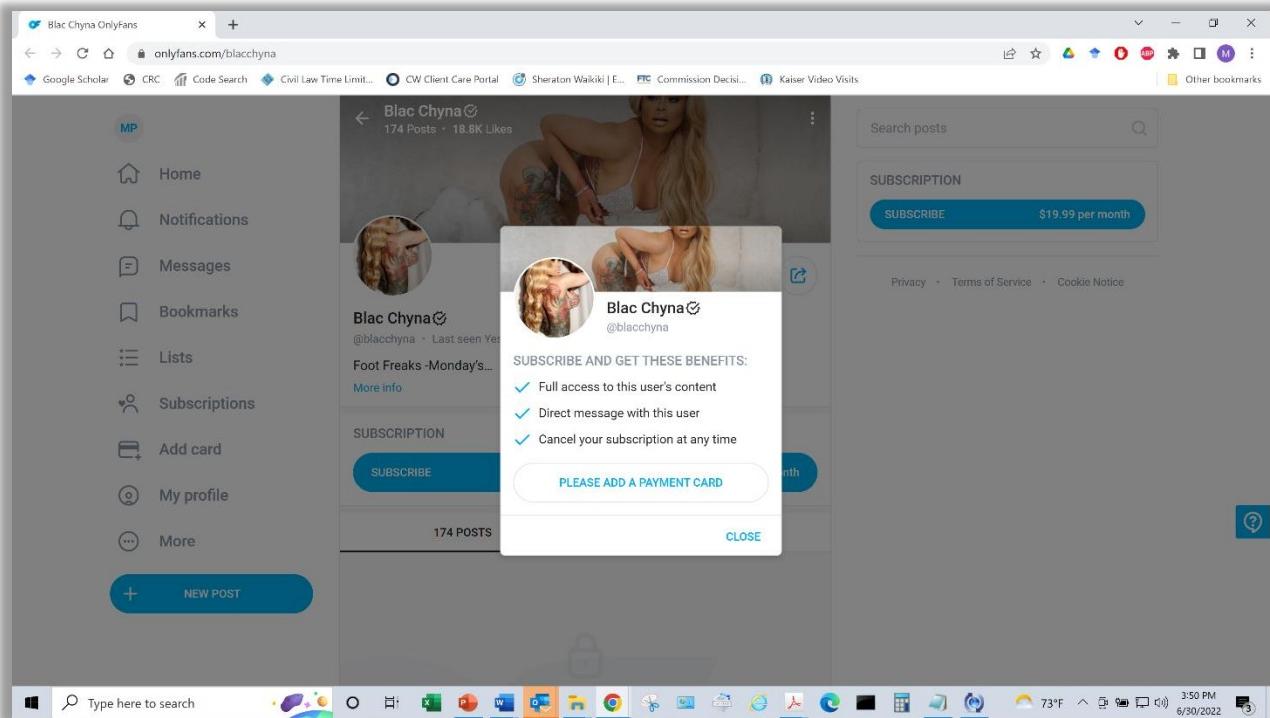
3 16. The foregoing violations are all made obvious through an illustration of an
4 exemplary enrollment to the OnlyFans account of the popular Kardashian-adjacent
5 celebrity and OnlyFans content creator known as “Blac Chyna,” who is reported to have
6 been the top-earning creator on OnlyFans for 2021, generating revenue for Defendants of
7 \$20 million per month.

8 17. A user joins OnlyFans by navigating to OnlyFans.com and clicking a
9 hyperlink titled “Sign up for OnlyFans.” The user then creates an account by choosing a
10 user name, and inputting their email address and choosing a password. After receiving an
11 email at that address to “verify your email address,” the user is taken to a “Home” screen
12 with a menu on the left, a middle section with a selection of “posts” made by users and
13 creators, a search tool for finding creators, and a list of “suggestions” on the right,
14 highlighting certain content creators whose profiles the user can scroll through.

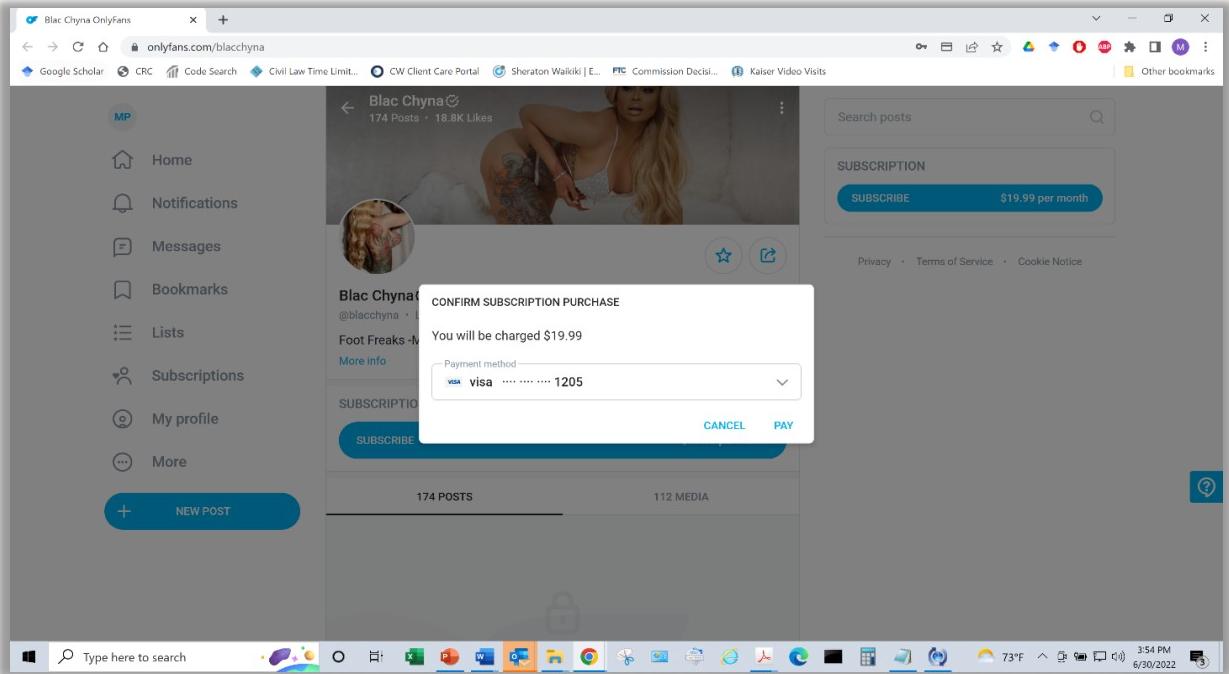
15 18. When a user searches and then navigates to the profile page for Blac Chyna,
16 for example, they are presented with the following screen:



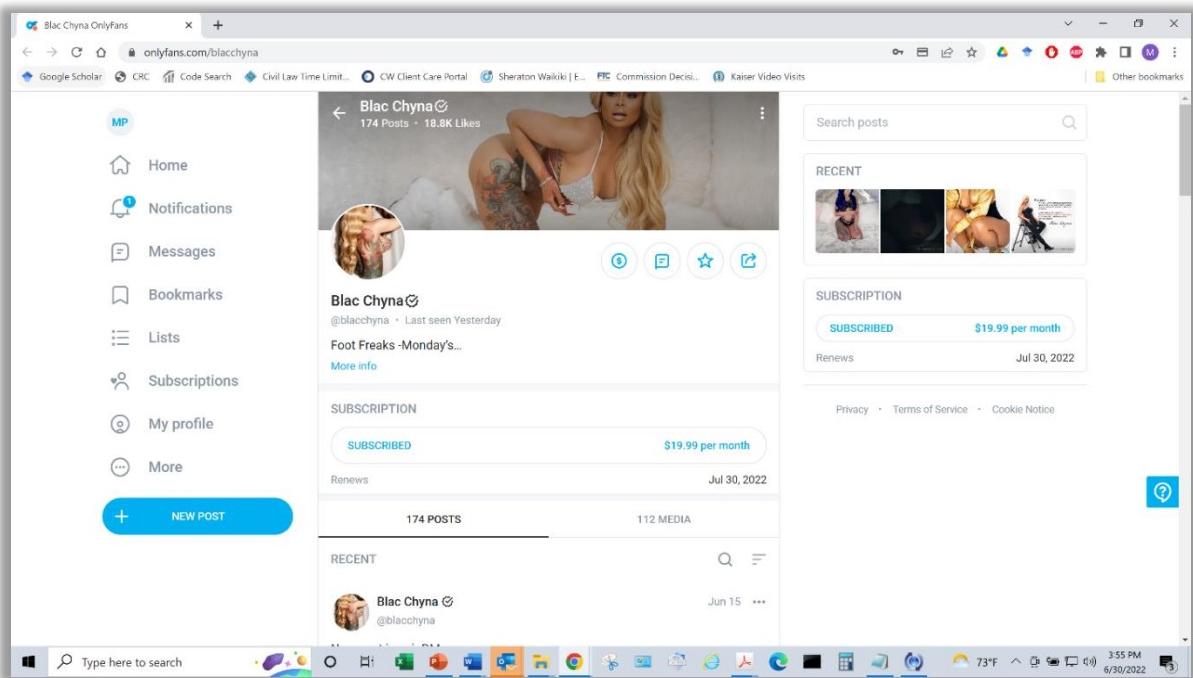
1 19. Upon clicking the “SUBSCRIBE” button, the user is advised of certain
2 “benefits” from the subscription and is asked to add a payment card:



15 20. The user then inputs their credit card information, and receives an on-screen
16 confirmation that “You will be charged \$19.99,” with no suggestion that the charge will
17 be recurring:

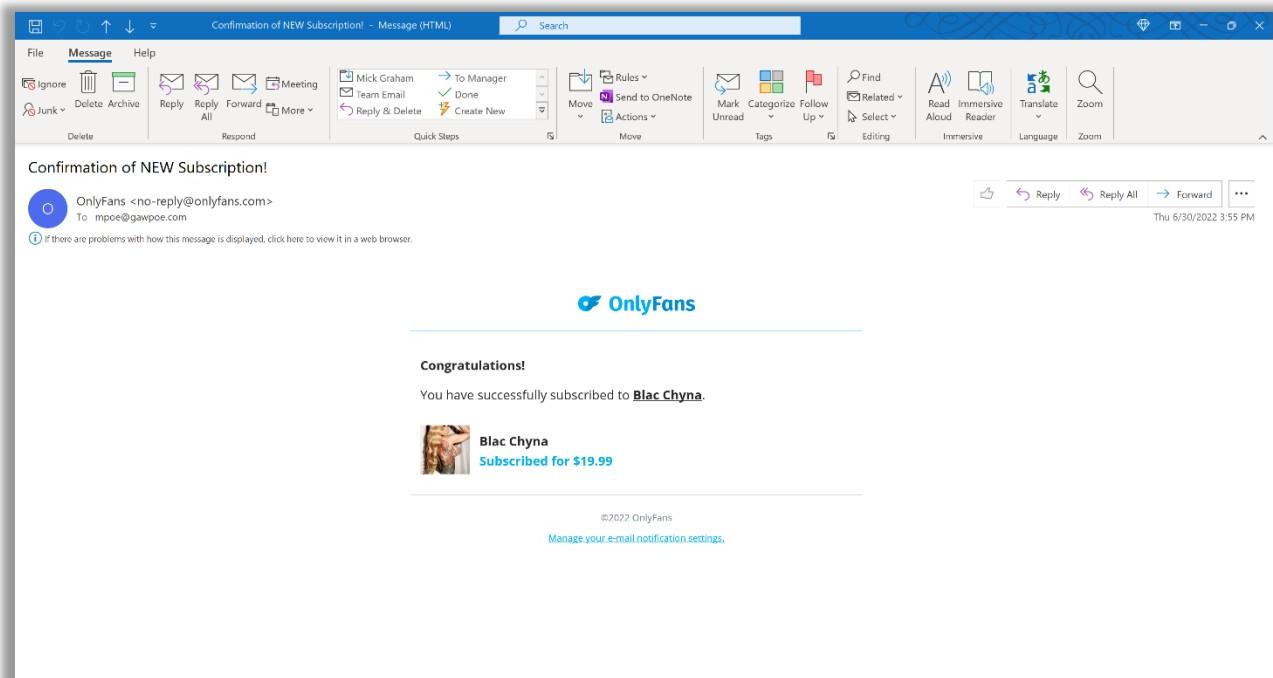


1 21. After clicking the “PAY” link on that screen the user is returned to the
2 creator’s profile page, where a box in the middle of the page notes that the user is
3 “SUBSCRIBED” in bold blue font, and with only a one-word indication (in smaller,
4 lower-case, light gray font) that the subscription “Renews,” and with the renewal date
5 indicated in similarly small, light-gray font:



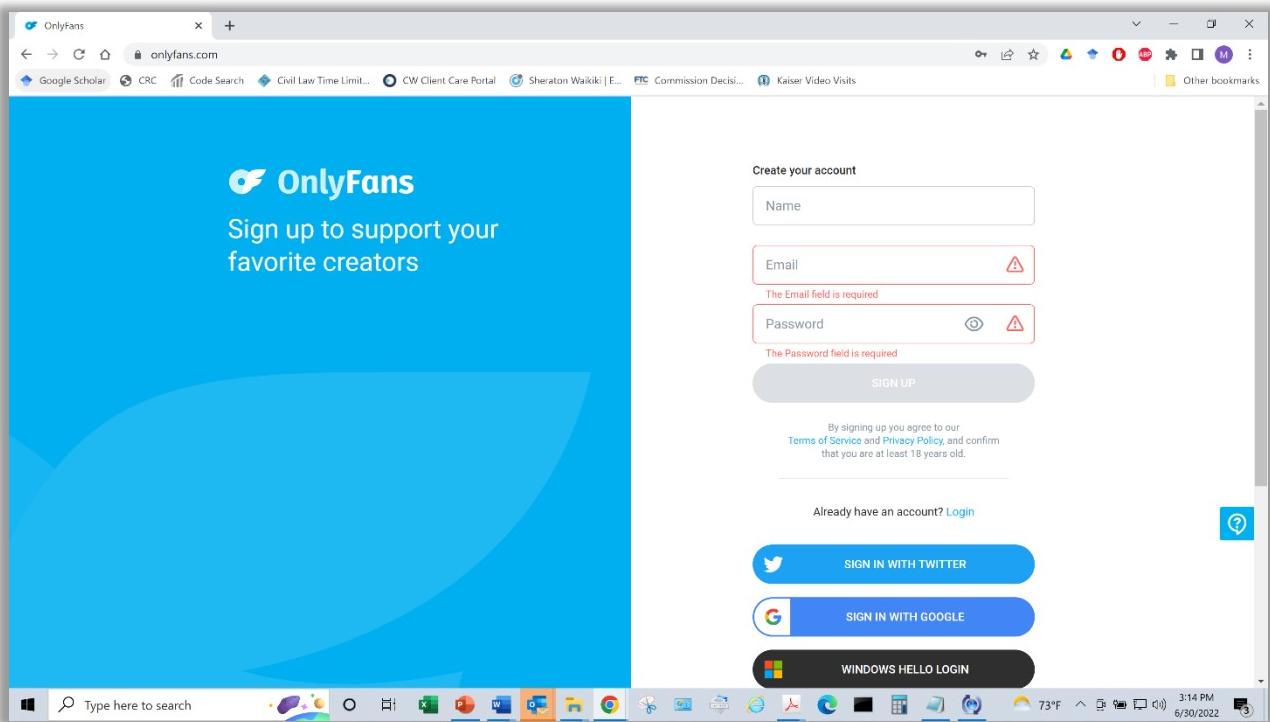
17 22. As shown, the creator’s profile page does not include any indication as to
18 how one can “unsubscribe,” or otherwise cancel future monthly payments.

19 23. Upon making payment, the user will sometimes receive a confirmation
20 email at the address they used in the sign-up process. That bare-bones confirmation email
21 does not provide any information or reminder that the charge will be recurring or
22 automatically renew, nor does it provide any information as to how the user can
23 “unsubscribe,” Defendants’ cancellation policy, or any of the other information required
24 by section 17602(a)(3):



12 24. In other circumstances, the details of which are unknown to Plaintiffs prior
13 to taking discovery in this matter, the user receives no acknowledgement whatsoever after
14 making payment, as exemplified by the instance where one pays \$6.99 to follow the
15 creator known as @annie_kay.

16 25. Furthermore, nowhere in the foregoing enrollment process to a particular
17 creator's account do Defendants "first obtain[] the consumer's affirmative consent to the
18 agreement containing the automatic renewal offer terms," which is in further violation of
19 section 17602(a)(2). In particular, on the webpage in the sign-up process where a user
20 selects a username and inputs his or her email address and selects a password, Defendants
21 include (in light grey and light blue, extremely small text) a notification that "By signing
22 up you agree to our Terms of Service and Privacy Policy," with hyperlinks to those
23 documents, as seen in the following screenshot:



26. Clicking on the “Terms of Service” link takes a user to a separate webpage that consists of a 36-page set of “terms.” Nowhere in that document are the terms of Defendants’ automatic renewal offer set forth clearly and conspicuously either, in further violation of ARL section 17602. Rather, the automatic renewal explanation is buried in section 8.h of that document, on its fifteenth page, where it is presented in a way that is indistinguishable from any other term in the agreement.

27. All of these violations of the ARL occur systematically, in that each user who subscribes to each content creator’s account receives the exact same legally inadequate disclosures on the front end of the transaction, and the exact same inadequate “acknowledgement” (or lack of any acknowledgement whatsoever) on the back end of the transaction.

28. Plaintiff Marcelo Muto was subject to this same pattern of violation of the ARL when he subscribed to follow the account of an OnlyFans creator called “@taste.of.heaven” in February 2021. Mr. Muto paid the initial subscription fee to that account, and in doing so failed to receive an adequate set of disclosures at the time of that transaction to clearly and conspicuously advise him that his card would be automatically

1 billed upon expiration of his initial enrollment period. Similarly, upon information and
2 belief Mr. Muto did not receive any post-transaction acknowledgement advising him of
3 the matters set forth in section 17602(a)(3), but if he did, that acknowledgement would
4 have consisted of nothing beyond the Blac Chyna confirmation email excerpted above.

5 29. Mr. Muto was thereafter charged a \$29.99 automatic renewal fee on or
6 about March 14, 2021. Only when Mr. Muto thereupon contacted Defendants to complain
7 about the charge—advising that “I was charged 30 dollars unintentionally”—did
8 Defendants respond through a customer service representative called “Evans” with the
9 explanation:

10 Hi there,

11 Thanks for reaching out.

12 The auto-renewal for the subscription to @taste.of.heaven was
13 not disabled before the next billing date. The auto-renew
14 feature was enabled from the start, I am sorry you did not
15 notice this at first.

16 You may cancel your subscription at any time, which will
17 allow you to access the user’s profile until the end of the
18 existing billing period, where you will lose access to the
19 content and will not be re-billed. Navigate to this page and
20 make sure that Auto-Renew for your subscription is disabled:
<https://onlyfans.com/my/subscriptions/>

21 If you see a Subscribed button and the renewal date for the
22 corresponding subscription - it is set for Auto-Renew. And if
23 you see the Renew button and the expiration date - it means
24 that Auto-Renew is already disabled.

25 Users can unsubscribe anytime, but there are no refunds as all
26 subscriptions are final and non-refundable. Please see more
27 details at this page: <https://onlyfans.com/terms>

28 Feel free to let us know if we can help you with anything else
29 in the future.

30 Evans

31 30. In other words, Defendants fully acknowledged the likelihood that Mr. Muto
32 “did not notice this at first,” (*i.e.*, that “[t]he auto-renew feature was enabled”), but
33 nevertheless advised that “there are no refunds as all subscriptions are final.” Had Mr.
34 Muto received the clear and conspicuous disclosures required by the ARL at the time he

1 initially subscribed to @taste.of.heaven, and the post-subscription acknowledgment
2 required by section 17602(a)(3) with details on the auto-renewal offer and a readily
3 accessible means of canceling, he would have canceled his subscription prior to the
4 renewal date, and would not have lost \$29.99 to Defendants.

5 31. Plaintiff Noah Breeze was subject to this same pattern of violation of the
6 ARL when he subscribed to follow the account of an OnlyFans creator called
7 “@cheriedeville.” Mr. Breeze paid the initial subscription fee to that account, and in
8 doing so failed to receive an adequate set of disclosures at the time of that transaction to
9 clearly and conspicuously advise him that his card would be automatically billed upon
10 expiration of his initial enrollment period. Similarly, upon information and belief Mr.
11 Muto did not receive any post-transaction acknowledgement advising him of the matters
12 set forth in section 17602(a)(3), but if he did, that acknowledgement would have consisted
13 of nothing beyond the Blac Chyna confirmation email excerpted above.

14 32. Mr. Muto was thereafter charged a \$14.99 automatic renewal fee on or
15 about January 24, 2022. Only when Mr. Muto thereupon contacted Defendants to
16 complain about the charge—advising that “I have no active subscriptions and just saw this
17 on my credit card statement”—did Defendants respond through a customer service
18 representative called “Dwayne” with the explanation:

19 Hi there,

20 Thank you for using OnlyFans.

21 According to our system, your account associated with the
22 email address noahbreeze@gmail.com was charged \$14.99 on
23 Jan 24, 2022 for the subscription renewal to the user
24 @cheriedeville. The auto-renew feature is enabled by default.
25 You have been notified about upcoming renewals via feed
26 hints.

27 You may cancel your subscription at any time, which will
28 allow you to access the user's profile until the end of the
existing billing period, where you will lose access to the
content and will not be re-billed. Navigate to this page and
make sure that Auto-Renew for your subscription is disabled:
<https://onlyfans.com/my/subscriptions/active>

If you see a Subscribed button and the renewal date for the

1 corresponding subscription - it is set for Auto-Renew. And if
2 you see the Renew button and the expiration date- it means
3 that Auto-Renew is already disabled. Simply click on the
4 corresponding button to change the Auto-Renew status.

5 Users can disable their subscriptions anytime, but all payments
6 on our platform are final and non-refundable. Please see more
7 details on this page: <https://onlyfans.com/terms>.

8 Check out some useful info here and feel free to let us know
9 anytime you need help.

10 Dwayne

11 OnlyFans

12 33. In other words, Defendants fully acknowledged that “[t]he auto-renew
13 feature is enabled by default,” and that the primary notice of such a renewal that Mr.
14 Breeze received were “hints” he supposedly received in his “feed.” As with Mr. Muto,
15 Defendants advised Mr. Breeze that “all payments on our platform are final and non-
16 refundable.” Had Mr. Breeze received the clear and conspicuous disclosures required by
17 the ARL at the time he initially subscribed to @cheriedeville, and the post-subscription
18 acknowledgment required by section 17602(a)(3) with details on the auto-renewal offer
19 and a readily accessible means of canceling, he would have canceled his subscription prior
to the renewal date, and would not have lost \$14.99 to Defendants. Mr. Breeze believes
that he paid additional automatic renewal fees for subscriptions to other creators, but at
this time has not been able to identify them.

20 CLASS ALLEGATIONS

21 34. Mr. Muto’s and Mr. Breeze’s experiences with Defendants’ deceptive
22 automatic renewal scheme are far from unique. Indeed, every California consumer who
23 subscribed to every creator account within the relevant statute of limitations period failed
24 to receive the disclosures that California law requires in exactly the same way that Mr.
25 Muto and Mr. Breeze failed to receive them. Because all of those automatic renewal fees
26 assessed against California consumers were “unlawful,” B&P Code § 17602(a), Mr.
27 Muto, Mr. Breeze, and all members of the class they seek to represent are entitled to
28 restitution of the fees they paid, in every successive month for which they were assessed.

1 35. Mr. Muto and Mr. Breeze bring this lawsuit as a class action under Code of
2 Civil Procedure § 382 on behalf of the following Class:

3 All individuals in California who subscribed to the accounts of
4 one or more OnlyFans creators in the four years preceding the
5 filing of this complaint, and who were subsequently assessed
6 an automatic renewal fee associated with those account(s),
7 where the charge for that fee was not charged back to
Defendants. Excluded from the Class are all employees of
Defendants, and the judicial officers to whom this case is
assigned.

8 Plaintiffs reserve the right to amend this class definition as necessary and appropriate
prior to moving for class certification.

9 36. The proposed class is so numerous that joinder of all class members would
10 be impracticable. Upon information and belief, Plaintiffs allege that the class includes at
11 least 10,000 members. The class members are all ascertainable from records in
12 possession of Defendants, specifically Defendants' customer and billing records.
13 Furthermore, Defendants' actions against class members are generally applicable to every
14 member of the proposed class, thereby making appropriate restitution and further
15 injunctive relief appropriate as to the entire proposed class.

16 37. The questions of law and fact that are determinative of Plaintiffs' allegations
17 are shared by all members of the class, and greatly predominate over any individual
18 issues. Common questions include, without limitation: (1) whether Defendants present
19 all statutorily-mandated automatic renewal offer terms in a manner that is clear and
20 conspicuous within the meaning of California law and in visual proximity to a request for
21 consent to the offer; (2) whether Defendants provide the post-transaction
22 acknowledgement disclosures required by section 17602(a)(3) of the ARL; (3)
23 Defendants' policies, practices and procedures for obtaining affirmative consent from
24 their California customers before charging their credit or debit card; and (4) the
25 appropriate remedies for Defendants' conduct.

26 38. Plaintiffs' claims are typical of the claims of the class members in that they
27 received the exact same inadequate pre-transaction disclosures as received by all members
28

1 of the class, and similarly received an inadequate post-transaction “acknowledgement”
2 that included the contents required by section 17602(a)(3). Plaintiffs’ claims are further
3 typical in that their cards were charged for an automatic renewal fee without Defendants
4 having first obtained their affirmative consent to an agreement containing clear and
5 conspicuous disclosure of all automatic renewal offer terms. Plaintiffs furthermore have
6 no interests that are adverse to those of the absent class members, and they have
7 committed to fairly and adequately protect the interests of those class members.

8 39. A class action is superior to other methods for resolving this controversy.
9
10 Because the amount of restitution to which each Class member may be entitled is low in
11 comparison to the expense and burden of individual litigation, it would be impracticable
12 for Class members to redress the wrongs done to them without a class action forum.
13 Furthermore, on information and belief, Class members do not know that their statutory
14 rights have been violated, so they would be unlikely to pursue single-party remedies on
15 their own behalf absent a class action. Class certification would also conserve judicial
resources and avoid the possibility of inconsistent judgments.

FIRST CAUSE OF ACTION

(False Advertising in Violation of the California Automatic Renewal Law, B&P Code

§§ 17535; 17600 *et seq.*)

19 40. Plaintiffs hereby incorporate the allegations of all preceding paragraphs as
20 though fully set forth herein.

21 41. Defendants enrolled Plaintiffs and an untold number of California
22 consumers who comprise the class alleged herein, into an automatic renewal program that
23 violates the ARL by, among other things, (a) failing to present automatic renewal offer
24 terms in a clear and conspicuous manner before a subscription or purchasing agreement is
25 fulfilled and in visual proximity to the offer; (b) charging the consumer's credit card or
26 debit card for an automatic renewal fee without first obtaining the consumer's affirmative
27 consent to an agreement containing clear and conspicuous disclosure of all automatic
28 renewal offer terms; and (c) failing to provide an acknowledgment that includes clear and

1 conspicuous disclosure of all automatic renewal offer terms, the cancellation policy, and
2 information regarding how to cancel in a manner that is capable of being retained by the
3 consumer and that provides a mechanism for cancellation that is cost-effective, timely,
4 and easy to use, all in violation of § 17602(a) and (b).

5 42. Defendants' violations of the ARL are in turn a violation of California's
6 False Advertising Law, Business & Professions Code section 17500 *et seq.* Under section
7 17535 of the False Advertising Law, Plaintiffs and members of the class are entitled to an
8 injunction prohibiting further violations of the ARL, and restoring to Plaintiffs and
9 members of the class the money that Defendants acquired from them by means of the
10 ARL violations described herein.

11 **SECOND CAUSE OF ACTION**

12 **(Violation of the California Consumer Legal Remedies Act, Civ. Code § 1750 *et seq.*)**

13 43. Plaintiffs hereby incorporate the allegations of all preceding paragraphs as
14 though fully set forth herein.

15 44. Plaintiffs and all members of the class are "consumers" within the meaning
16 of Civil Code § 1761(d) in that Plaintiffs sought or acquired Defendants' goods and/or
17 services for personal purposes.

18 45. Defendants' membership program pertains to "services" within the meaning
19 of Civil Code § 1761(a) and (b).

20 46. The payments that Plaintiffs and members of the class made to Defendants
21 are "transactions" within the meaning of Civil Code section 1761(e).

22 47. Defendants have violated Civil Code § 1770, subdivisions (a)(5), (9), and
23 (14), by representing that Defendants' goods or services have characteristics that they do
24 not have; advertising goods and services with the intent not to sell them as advertised; and
25 representing that a transaction confers or involves rights, remedies, or obligations that it
26 does not have or involve, or that are prohibited by law.

27 48. Unless enjoined and restrained by this Court, Defendants will continue to
28 commit the violations alleged herein. Pursuant to Civil Code § 1780(a)(2), on behalf of

1 the Class and also for the benefit of the general public of the State of California, Plaintiffs
2 seek an injunction prohibiting Defendants from continuing their unlawful practices as
3 alleged herein.

4 49. Pursuant to Civil Code § 1782, more than 30 days prior to this filing Mr.
5 Muto (through his counsel) notified each Defendant of the acts and practices complained
6 of herein, and specified how they violate the CLRA. In those letters Mr. Muto further
7 demanded that Defendants rectify the issue by ceasing its unlawful practices, and making
8 restitution to all identifiable consumers in California.

9 50. Defendants declined to provide the relief requested in Mr. Muto's CLRA
10 demand letter. Accordingly, Plaintiffs further demand the damages and other relief that
11 they are entitled to pursuant to Civil Code § 1780(a).

12 **THIRD CAUSE OF ACTION**

13 **(Violation of the California Unfair Competition Law, B&P Code § 17200 *et seq.*)**

14 51. Plaintiffs hereby incorporate the allegations of all preceding paragraphs as
15 though fully set forth herein.

16 52. The Unfair Competition Law defines unfair competition as including any
17 unlawful, unfair, or fraudulent business act or practice; any unfair, deceptive, untrue, or
18 misleading advertising; and any act of false advertising under § 17500.

19 53. In the course of conducting business in California within the applicable
20 limitations period, Defendants committed unlawful, unfair, and/or fraudulent business
21 practices, and engaged in unfair, deceptive, untrue, or misleading advertising, by, inter
22 alia and without limitation: (a) failing to present automatic renewal offer terms in a clear
23 and conspicuous manner before a subscription or purchasing agreement is fulfilled and in
24 visual proximity to the offer; (b) charging the consumer's credit card or debit card for an
25 automatic renewal fee without first obtaining the consumer's affirmative consent to an
26 agreement containing clear and conspicuous disclosure of the automatic renewal offer
27 terms; and (c) failing to provide an acknowledgment that includes clear and conspicuous
28 disclosure of all automatic renewal offer terms, the cancellation policy, and information

regarding how to cancel in a manner that is capable of being retained by the consumer and that provides a mechanism for cancellation that is cost-effective, timely, and easy to use, all in violation of § 17602(a) and (b).

54. Defendants' acts, omissions, nondisclosures, and statements as alleged herein were and are false, misleading, and/or likely to deceive the consuming public.

55. Plaintiffs and all members of the class have lost money as a result of Defendants' unlawful acts of unfair competition, in that Plaintiffs would not have incurred the automatic renewal fees associated with the accounts of the creators known as @taste.of.heaven and @cheriedeville had Defendants fully, clearly, and conspicuously apprised them of the terms of the automatic renewal offer described herein.

56. Pursuant to § 17203, Plaintiffs and the members of the class are entitled to restitution of all amounts paid to Defendants in connection with an automatic renewal membership program in the four years preceding the filing of this Complaint and continuing until Defendants' acts of unfair competition cease.

57. Unless enjoined and restrained by this Court, Defendants will continue to commit the violations alleged herein. Pursuant to § 17203, on behalf of the class, and for the benefit of the general public of the State of California, Plaintiffs seeks an injunction prohibiting Defendants from continuing their unlawful practices as alleged herein.

PRAAYER

Plaintiffs pray for judgment on behalf of himself and all members of the class alleged herein, against Defendants, as follows:

1. For restitution of the amounts unlawfully charged to the credit and debit cards of Plaintiffs and members of the class in violation of the ARL;
 2. For damages pursuant to Civil Code § 1780(a);
 3. For injunctive relief against further violations of the ARL by Defendants;
 4. For reasonable attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and Civil Code § 1780(e);
 5. For costs of suit;

6. For prejudgment interest; and
 7. For such other relief as the Court deems just and proper.

Dated: January 17, 2023

GAW | POE LLP

By: s/ *Mark Poe*
MARK POE
Attorneys for Plaintiffs